MONTANA ADMINISTRATIVE REGISTER

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PAGES 2230-2277

ISSUE NO. 23

The Montana Administrative Register (MAR or Register), a twice-monthly publication, has three sections. The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted. The Rule Adoption Section contains final rule notices which show any changes made since the proposal stage. All rule actions are effective the day after publication of the adoption notice unless otherwise specified in the final notice. The Interpretation Section contains the Attorney General's opinions and state declaratory rulings. Special notices and tables are found at the end of each Register.

Inquiries regarding the rulemaking process, including material found in the Montana Administrative Register and the Administrative Rules of Montana, may be made by calling the Secretary of State's Office, Administrative Rules Services, at (406) 438-6122.

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BEFORE THE DEPARTMENT OF FISH, WILDLIFE AND PARKS
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 12.2.605, 12.2.606, 12.2.607, and 12.2.608 pertaining to public access land agreements	))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On January 5, 2023, at 10:00 a.m., the Department of Fish, Wildlife and Parks (department) will hold a telephonic public hearing via the ZOOM meeting platform to consider the proposed amendment of the above-stated rules. There will be no in-person hearing. Interested parties may access the remote conferencing in the following way:

(a) Dial by telephone: 12133388477
Meeting ID: 865 3263 4269
Passcode: 825172

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the department, no later than 5:00 p.m., on December 23, 2022, to advise us of the nature of the accommodation that you need. Please contact Jessica Snyder, Department of Fish, Wildlife and Parks, P.O. Box 200701, Helena, Montana, 59620-0701; telephone (406) 444-9785; or e-mail jesssnyder@mt.gov.

3. The rules proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

12.2.605 DEFINITIONS (1) "Inaccessible public land" means public land wholly surrounded by private land by which there is no other legal access via public road, trail, right of way or easement; public waters; adjacent federal, state, county, or municipal land that is open to public use; or adjacent private land for which that landowner has not granted permission to cross.

(2) "Landowner" means an individual, association, organization, or business entity, that owns land in fee, or a tenant or contract for deed purchaser with written authority to enter a PALA and receive payments.

(3) "PALA" means public access land agreement. A PALA is an agreement between a private landowner and the department pursuant to 87-1-295, MCA, whereby the public is allowed access across private lands to inaccessible public lands or under accessible public lands.

(4) "PL/PW" means private land/public wildlife advisory committee provided for in 87-1-269, MCA.

(5) "Public land" means FWP lands, and state and school trust lands as defined in 77-1-101, MCA, or federal land managed by the U.S. Department of the Interior or the U.S. Department of Agriculture.

(6) "Public land that is leased by the landowner" means "Inaccessible public land" or "under accessible public land" for which a landowner has an agreement with a government agency authorizing the landowner to use the whole or part of the ~~inaccessible~~ public land for grazing or farming.

(7) "Under accessible public land" means public land for which there is no other legal access point within ~~two miles~~ one mile via public road, trail, right of way or easement; public waters; adjacent federal, state, county, or municipal land that is open to public use. A distance of less than one mile may be eligible if the department determines that it improves public access to lands based on site specific considerations. Access via public waters may also be considered under accessible if there are safety concerns which limit access by boat (due to rapids, boulders, log jams) and/or by foot while remaining within the high water mark (due to swift currents, deep water along banks, slippery substrate).

AUTH: ~~87-1-297~~ 87-1-295, MCA
IMP: 87-1-295, ~~87-1-296,~~ MCA

12.2.606 APPLICATION FOR PUBLIC ACCESS LAND AGREEMENT

(1) The PALA application must include the following information:

(a) legal land description of public land to which access is being proposed;

(b) description of the proposed road, travel route, or connecting private lands legal land description through which access is being proposed;

(c) map depicting public land to be accessed, and public access route across private land;

(d) transportation mode by which public access is to be allowed;

(e) evidence, such as a copy of the lease or permit, as to whether the public land to be accessed is public land that is leased by the landowner; and

(f) request for reimbursement of improvements, if applicable, on private land ~~to the land provided by the department~~ to facilitate public access to the public land. Improvements are limited to and valued at $1,000 per agreement year dependent upon available program funds.

(2) If the property through which access is provided is owned in common by multiple owners, the PALA application must specify the share of the payment to which each owner is entitled, and each owner or agent of the owner must sign the application.

(3) The department shall develop and maintain a PALA application form.

(4) Failure to include any required information may result in denial of the application.

AUTH: ~~87-1-297~~ 87-1-295, MCA
IMP: 87-1-295, ~~87-1-296,~~ MCA

12.2.607 PUBLIC ACCESS LAND AGREEMENTS (1) Before approving a PALA the department must exercise due diligence to verify that:

(a) the public lands are not restricted or closed to general recreational use by the land management agency that owns or has legal control of the public land;

(b) the private lands, or any right of way, road, or trail to be utilized are wholly owned by the applicant(s) and there is open access across the designated access route;

(c) the public has no existing right of access over the proposed route;

(d) access routes restricted to foot travel only:

(i) must be capable of accommodating normal ambulatory travel; and

(ii) must not exceed one linear mile from the beginning to the end of the access route; and

(e) access routes available to motorized vehicles must be safe and passable during dry conditions for two-wheel drive vehicles.

(2) If access to inaccessible public land or under accessible public land can only or most effectively be provided through separate properties owned by different landowners, an agreement may be issued with each landowner provided each landowner holds the lease or permit on the public land or the public land does not have an existing lease or permit.

(3) Contingent on the annual availability of funds to operate the PALA program, landowners may elect to participate in a PALA for up to 10 years with the agreement being renewed annually.

(4) Applications must be received by a date set by the department ~~at least 6 weeks prior to the next upcoming PL/PW meeting~~ to allow for time for adequate department ~~and PL/PW~~ review.

(5) A PALA shall not be construed to support, establish or preclude, limit or diminish any claim for the right to public use.

(6) The department may not enter a PALA where there is an existing right of public access over the proposed access route. If the department is uncertain whether the proposed access route is public or private, or if a controversy exists over whether the proposed access route is public or private, the department shall present its findings to the PL/PW for its consideration in its recommendation.

(7) Consideration for PALA enrollment will be given to those sites that are open during commission-established hunting or fishing seasons, or both.

(8) A PALA may be terminated by the department or the landowner if the terms of the agreement are violated. An agreement may be canceled, and a landowner's property withdrawn from the program at any time due to circumstances beyond the control of the landowner or the department, such as death, illness, natural disaster, or acts of nature. In the event of termination, payment will be reduced and correlated to the time frame and access provided.

(9) The landowner and the department may deny access to an individual(s) for violation of PALA rules.

(10) A PALA does not convey to the public any right to hunt or otherwise recreate on the private land through which they can travel to reach public land.

(11) The department shall maintain and make available to the public a list of current PALA locations and rules.

(12) With department approval, a landowner may impose reasonable limitations through temporary closure of a PALA to address concerns related to high

fire danger, weather-related impact to travel route, safety, or agricultural production activities such as livestock handling or harvest and planting of crops, so long as:

(a) the landowner notifies department regional headquarters at least 24 hours prior to the closure;

(b) the landowner posts notice to the public on-site; ~~and~~

(c) the closure is removed within 24 hours after the conditions causing the closure no longer to exist~~.~~; and

(d) its closure is in effect for no more than seven days without additional department review and approval.

AUTH: ~~87-1-297~~ 87-1-295, MCA
IMP: 87-1-295, ~~87-1-296,~~ MCA

12.2.608 LANDOWNER COMPENSATION (1) In negotiating for the annual payment to a landowner, the department shall consider:

(a) acres of public land accessed;

(b) the quality of fish or wildlife habitat that may be provided by the public land to be accessed;

(c) duration public access is allowed;

(d) mode of transportation allowed;

(e) whether closures can be expected; and

(f) other uses allowed.

(2) Landowners in the program may receive:

(a) monetary compensation not to exceed $15,000 per annual agreement; and

(b) improvements provided by the department to the private land that facilitate public access.

AUTH: ~~87-1-297~~ 87-1-295, MCA
IMP: 87-1-295, ~~87-1-296,~~ MCA

REASON: The department is proposing to amend the rules pertaining to public access land agreements to streamline administration of the program and better reflect existing practices as well as to increase the potential for additional applications that qualify by reducing the access point to public lands from two miles to one mile.

The rules are also being amended to update the references to statutes that were repealed in the 2021 legislative session.

4. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: PALA Rules, Department of Fish, Wildlife and Parks, P.O. Box 200701, Helena, Montana, 59601-0701; or e-mail lndsportrelations@mt.gov with the subject line "PALA Rules," and must be received no later than January 8, 2023.

5. Jessica Snyder, or another hearing officer appointed by the department, has been designated to preside over and conduct the hearing.

6. The department maintains a list of interested persons who wish to receive notice of rulemaking actions proposed by the department or commission. Persons who wish to have their name added to the list shall make a written request that includes the name and mailing address of the person to receive the notice and specifies the subject or subjects about which the person wishes to receive notice. Such written request may be mailed or delivered to: Department of Fish, Wildlife and Parks, Legal Unit, P.O. Box 200701, 1420 East Sixth Avenue, Helena, MT 59620-0701, or may be emailed to jesssnyder@mt.gov

7. An electronic copy of this proposal notice is available through the Secretary of State's web site at http://sosmt.gov/ARM/Register.

8. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

9. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rules will not significantly and directly impact small businesses.

/s/ Zach Zipfel
Zach Zipfel
Rule Reviewer

/s/ Dustin Temple
Dustin Temple
Deputy Director
Department of Fish, Wildlife and Parks

Certified to the Secretary of State November 29, 2022.

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 37.79.304 pertaining to Healthy Montana Kids Evidence of Coverage	)))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On December 29, 2022, at 9:00 a.m., the Department of Public Health and Human Services will hold a public hearing via remote conferencing to consider the proposed amendment of the above-stated rule. Interested parties may access the remote conferencing platform in the following ways:

(a) Join Zoom Meeting at: https://mt-gov.zoom.us/j/82033979924?pwd=bzl0R29sNVMrdk5rOUhDOVM1eENIdz09, meeting ID: 820 3397 9924, and password: 049270; or

(b) Dial by telephone: +1 646 558 8656, meeting ID: 820 3397 9924, and password: 049270. Find your local number: https://mt-gov.zoom.us/u/kditMZbAkd.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Public Health and Human Services no later than 5:00 p.m. on December 15, 2022, to advise us of the nature of the accommodation that you need. Please contact Kassie Thompson, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail hhsadminrules@mt.gov.

3. The rule as proposed to be amended provides as follows, new matter underlined, deleted matter interlined:

37.79.304 SERVICES COVERED (1) The department adopts and incorporates by reference the HMK Evidence of Coverage dated ~~November 1, 2017~~ January 1, 2023, which is available on the department's web site at www.hmk.mt.gov.

(2) remains the same.

AUTH: 53-4-1009, 53-4-1105, MCA
IMP: 53-4-1005, 53-4-1109, MCA

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) is proposing to amend ARM 37.79.304.

ARM 37.79.304 adopts the Healthy Montana Kids (HMK) Evidence of Coverage (EOC) document describing the HMK benefit plan. Any changes to the benefit plan require the EOC, the reference to the EOC in the rule, and the effective date of the rule, to be updated.

The proposed changes to the EOC document are as follows:

- Provide for HMK plan coverage of Applied Behavior Analysis (ABA), which the current EOC shows as an excluded service. This update to the EOC will bring the manual in conformity with current practice of covering ABA services, as authorized by legislation passed in 2017. Coverage of ABA was included in the state plan amendment, SPA 18-0021, which was submitted to the Centers for Medicare & Medicaid Services (CMS) in 2018 and approved on November 27, 2019.
- Reflect coverage of habilitation and rehabilitation services to "maintain, improve, or restore" bodily functions for HMK members. HMK has provided this service to members, and this change will bring the manual up to date to reflect current plan coverage.
- Change the contact information for the HMK dental and eyeglass programs to reflect the accurate point of contact.
- Update the administration and prior authorization (PA) authority of Durable Medical Equipment, Prosthetics, Orthotics, and Medical Supplies (DMEPOS) from Blue Cross Blue Shield (BCBS) to Conduent to correctly reflect the entity that processes DMEPOS claims. Also, Conduent is responsible for administration of nutritional services, as it is considered a DMEPOS item.
- Add DMEPOS to Section 5 to identify that the department is responsible for first level appeals relating to DMEPOS services.
- Update the administration of hearing aids and cochlear implants to Conduent to reflect current practice. The update includes identifying that the department is responsible for PA requests for hearing aids, and Conduent is responsible for PA requests for cochlear implants. Additionally, the department is responsible for handling appeals relating to hearing aids. These changes accurately reflect administration duties and PA responsibility.
- Clarify that BCBS is responsible for PA requests for outpatient services for treatment of Severe Emotional Disturbance (SED), and also update the BCBS phone number for that purpose.
- Remove the term "professional call" from the definitions section as it is covered under telehealth.
- Change the term "telemedicine" to "telehealth" to reflect correct terminology.
- Update the reference to the Office of Fair Hearings to reflect the correct title of Office of Administrative Hearings.
- Change DPHHS first and second level appeal length to 30 days for providers and 90 days for members to conform to provisions in the Administrative Rules of Montana.
- Make a variety of grammatical corrections to make the document clearer to readers.

The department has posted a redlined version of the proposed EOC manual with the changes outlined above at https://dphhs.mt.gov/HMK/.

Fiscal Impact

Removing the exclusion for Healthy Montana Kids (HMK) Applied Behavioral Analysis (ABA) was estimated in the fiscal note for SB 199 to cost $746,000 per year and affect 270 HMK members. That amount was added to the budget of Children's Health Insurance Program (CHIP) state plan amendment 18-0021, which was submitted to CMS June 29, 2018, and approved November 27, 2019.

5. The department intends to apply these proposed rule amendments retroactively to January 1, 2023. A retroactive application of the proposed rule amendments does not result in a negative impact to any affected party.

6. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Kassie Thompson, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail hhsadminrules@mt.gov, and must be received no later than 5:00 p.m., January 6, 2023.

7. The Office of Legal Affairs, Department of Public Health and Human Services, has been designated to preside over and conduct this hearing.

8. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 6 above or may be made by completing a request form at any rules hearing held by the department.

9. An electronic copy of this notice is available on the department's web site at https://dphhs.mt.gov/LegalResources/administrativerules, or through the Secretary of State's web site at http://sosmt.gov/ARM/register.

10. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was notified by email on October 25, 2022.

11. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rule will not significantly and directly impact small businesses.

12. Section 53-6-196, MCA, requires that the department, when adopting by rule proposed changes in the delivery of services funded with Medicaid monies, make a determination of whether the principal reasons and rationale for the rule can be assessed by performance-based measures and, if the requirement is applicable, the method of such measurement. The statute provides that the requirement is not applicable if the rule is for the implementation of rate increases or of federal law.

The department has determined that the proposed program changes presented in this notice are not appropriate for performance-based measurement and therefore are not subject to the performance-based measures requirement of 53-6-196, MCA.

/s/ BRENDA K. ELIAS
Brenda K. Elias
Rule Reviewer

/s/ CHARLES T. BRERETON
Charles T. Brereton, Director
Department of Public Health and Human Services

Certified to the Secretary of State November 29, 2022.

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 37.115.106 pertaining to public swimming pools	)))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On December 29, 2022, at 10:00 a.m., the Department of Public Health and Human Services will hold a public hearing via remote conferencing to consider the proposed amendment of the above-stated rule. Interested parties may access the remote conferencing platform in the following ways:

(a) Join Zoom Meeting at: https://mt-gov.zoom.us/j/81456737371?pwd=N1psbXdiS0kyeStmQkVlS0dLb3RUdz09, meeting ID: 814 5673 7371, and password: 426355; or

(b) Dial by telephone: +1 646 558 8656, meeting ID: 814 5673 7371, and password: 426355. Find your local number: https://mt-gov.zoom.us/u/kbbAoUy7kv.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Public Health and Human Services no later than 5:00 p.m. on December 15, 2022, to advise us of the nature of the accommodation that you need. Please contact Kassie Thompson, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail hhsadminrules@mt.gov.

3. The rule as proposed to be amended provides as follows, new matter underlined, deleted matter interlined:

37.115.106 INCORPORATION BY REFERENCE (1) The ~~Department of Public Health and Human Services~~ department, except as otherwise provided, adopts and incorporates by reference the following chapters of the International Swimming Pool and Spa Code (ISPSC), ~~2018~~ 2021, which sets forth design, construction, alteration, repair, and maintenance standards for public swimming pools. This publication may be obtained by contacting the International Code Council, 3060 Saturn Street, Suite 100, Brea, California 92821. The following chapters of this publication are being adopted with modifications as described:

(a) through (j) remain the same.

(2) The ~~Department of Public Health and Human Services~~ department adopts and incorporates by reference the American National Standard for Suction Entrapment Avoidance in Swimming Pools, Wading Pools, Spas, Hot Tubs, and Catch Basins~~, 2013~~ (ANSI/PHTA/ICC 7 – 2020), which sets forth design and performance criteria for circulation systems including components, devices, and

related technology installed to protect against entrapment hazards in public swimming pools. This publication may be obtained by contacting The Association of Pool and Spa Professionals, 2111 Eisenhower Ave., Alexandria, VA 22314.

(3) The department adopts and incorporates by reference the provisions in Circular FCS 3-~~2020~~ 2022. Circular FCS 3-~~2020~~ 2022 may be obtained by calling 406-444-2837 to request a copy; or email hhsfcs@mt.gov, or request one by mail by writing to DPHHS – FCS, P.O. Box 202951, Helena, MT 59620-2951, or by visiting the department's web site at: https://dphhs.mt.gov/publichealth/FCSS/SwimmingPools.

AUTH: 50-53-103, MCA
IMP: 50-53-103, MCA

4. STATEMENT OF REASONABLE NECESSITY

The Department of Public Health and Human Services (department) is proposing to revise ARM 37.115.106, to adopt and incorporate by reference newer editions of: (1) the International Swimming Pool and Spa Code (ISPSC); (2) American National Standard for Suction Entrapment Avoidance in Swimming Pools, Wading Pools, Spas, Hot Tubs, and Catch Basins (ANSI/PHTA/ICC 7); and (3) the department's circular governing standards for swimming pools.

Updating the ISPSC reference to the 2021 edition is necessary to align with recent rule changes made by the Department of Labor and Industry and thereby ensure consistent standards for construction of swimming pools. *See* MAR Notice No. 24-301-351.

Updating the ANSI/PHTA/ICC 7 reference to the 2020 edition will ensure Montana maintains consistency with national standards and best practices governing the safe operation of swimming pools.

Updating the rule to refer to Circular FCS 3-2022 is necessary to implement proposed revisions to the department's Montana Standards for Swimming Pools Circular. The department is proposing three primary changes to the Circular.

First, the department is proposing to make failure to comply with ANSI/APSP/ICC 7 drain cover documentation requirements a violation that may require immediate closure subject to the discretion of the regulatory authority rather than a violation that mandates immediate closure of the facility without allowing for the exercise of any discretion. The proposed change provides for increased regulatory flexibility by recognizing that certain instances of lack of required documentation may not create health and safety concerns that are so severe as to warrant immediate closure of a facility.

Second, the department is proposing to update reference to the Centers for Disease Control and Prevention (CDC) Fecal Incident Response under Section 2.4 of the

Circular to the most current version. The proposed change is necessary to ensure current national safety standards are followed.

Third, the department is proposing the addition of a legionella contamination response plan to direct regulatory authorities and pool operators to follow national standards contained in the CDC's Model Aquatic Health Code to shut down, clean, sanitize, and test public spas that are implicated in outbreaks of Legionaries and Pontiac fever.

A copy of the Circular with the proposed revisions is located at: https://dphhs.mt.gov/publichealth/FCSS/SwimmingPools.

5. The proposed rule changes are intended to be effective upon the day after the date of publication of the adoption notice.

6. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Kassie Thompson, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail hhsadminrules@mt.gov, and must be received no later than 5:00 p.m., January 6, 2023.

7. The Office of Legal Affairs, Department of Public Health and Human Services, has been designated to preside over and conduct this hearing.

8. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 6 above or may be made by completing a request form at any rules hearing held by the department.

9. An electronic copy of this notice is available on the department's web site at https://dphhs.mt.gov/LegalResources/administrativerules, or through the Secretary of State's web site at http://sosmt.gov/ARM/register.

10. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

11. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rule will not significantly and directly impact small businesses.

/s/ ROBERT LISHMAN
Robert Lishman
Rule Reviewer

/s/ CHARLES T. BRERETON
Charles T. Brereton, Director
Department of Public Health and Human Services

Certified to the Secretary of State November 29, 2022.

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 37.107.303, 37.107.310, and 37.107.316 pertaining to Marijuana Sampling Protocols	))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On December 29, 2022, at 1:00 p.m., the Department of Public Health and Human Services will hold a public hearing via remote conferencing to consider the proposed amendment of the above-stated rules. Interested parties may access the remote conferencing platform in the following ways:

(a) Join Zoom Meeting at: https://mt-gov.zoom.us/j/89833126215?pwd=K0FYYjNycVZCaUtISWVWNnkrZmozZz09, meeting ID: 898 3312 6215, and password: 194878; or

(b) Dial by telephone: +1 646 558 8656, meeting ID: 898 3312 6215, and password: 194878. Find your local number: https://mt-gov.zoom.us/u/kcDJos4JZY.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Public Health and Human Services no later than 5:00 p.m. on December 15, 2022, to advise us of the nature of the accommodation that you need. Please contact Kassie Thompson, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail hhsadminrules@mt.gov.

3. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

37.107.303 DEFINITIONS As used in this subchapter, the following definitions apply:

(1) remains the same.

(2) "Accredited college or university" means a college or university accredited by a regional or national accrediting agency that is an accreditor recognized by the U.S. Secretary of ~~the U.S. Department of~~ Education.

(3) and (4) remain the same.

(5) "Analytical batch" means a set of matrix-specific laboratory test samples that are prepared together over a 24-hour time period using the same set of reagents for the same analysis and includes a laboratory control sample, method blank, replicate, and matrix spike ~~the required quality control samples~~.

(6) remains the same.

(7) "As received" means the mass of the marijuana item as determined by

the testing laboratory with no dry weight calculation applied.

(7) through (11) remain the same, but are renumbered (8) through (12).

(13) "Composite laboratory test sample" and "composite sample" mean a series of sample increments taken from different laboratory test samples, strains of usable marijuana, marijuana concentrates or extracts, marijuana infused products, marijuana items, harvest lots, process lots, or test batches thereof that are combined, mixed, batched, or composited together for testing purposes.

(14) "Container" means the vessel or receptacle that comes into physical contact with the marijuana item.

(15) "Contaminant" means any physical, chemical, or biological substance that may be harmful if consumed at concentrations above the action level. Potency is not a contaminant.

(12) through (14) remain the same, but are renumbered (16) through (18).

(19) "Direct marijuana infused product" means a marijuana infused product manufactured by infusing lipid based products such as plant based oils, animal fats, or petroleum based products (e.g., coconut oil, vegetable oil, butter, salves, etc.) directly from tested and compliant usable marijuana. The term does not include marijuana infused products manufactured using solvent based or non-solvent based concentrates and extracts.

(20) "Final form" means the form of a marijuana item at the time it is made available for sale by a licensee to a customer.

(21) "Final packaging" means the packaging of the final form marijuana item.

~~(15)~~(22) "Harvest lot" means a specifically identified quantity of marijuana that is cultivated utilizing the same growing practices, harvested within a 72-hour period at the same location, and cured under uniform conditions. ~~A harvest lot may contain multiple strains.~~ Effective September 1, 2023, a harvest lot may not contain multiple strains and must be identical in strain.

(23) "Indirect marijuana infused product" means a marijuana infused product manufactured from only tested and compliant solvent based or non-solvent based concentrates.

(16) through (21) remain the same, but are renumbered (24) through (29).

~~(22)~~(30) "Laboratory quality assurance" means a set of operating principles that enable laboratories to produce defensible data of known accuracy and precision and includes employee training, traceability, equipment preventative maintenance procedures, calibration procedures, and quality control testing.

(23) through (33) remain the same, but are renumbered (31) through (41).

~~(34)~~(42) "Method reporting limit (MRL)" means the lowest amount of an analyte in a sample that can be quantitatively determined with stated, acceptable precision, and accuracy under stated analytical conditions.

(43) "Non-solvent based marijuana concentrate and extract" means a marijuana concentrate and extract manufactured from only tested and compliant usable marijuana using water, ice, dry ice, a press, sieve, or filter and that does not use any solvent listed in the Quality Assurance Testing Requirements Appendix or solvent as defined in ARM 37.107.303. The term includes kief, hash, and rosin.

(44) "Pre-roll" means any combination of the following constructed with rolling paper, a filter, tip, or cone: flower, shake, leaf, trim, kief, or marijuana concentrate and extract. Pre-rolls are divided into two subgroups:

(a) non-infused pre-rolls contain only previously tested and compliant usable marijuana; and

(b) infused pre-rolls contain previously tested and compliant usable marijuana and previously tested and compliant marijuana concentrate and extract, kief, trim, or other marijuana items.

(35) remains the same, but is renumbered (45).

~~(36)~~(46) "Process lot" means:

(a) any amount of marijuana concentrate or extract of the same type and processed in the same 48-hour period, using the same extraction methods, standard operating procedures, ingredients, reagents, and test batches from the same or different harvest lots; ~~or~~

(b) any amount of marijuana infused products of the same type and processed in the same 48-hour period, using the same ingredients, reagents, standard operating procedures, and test batches from the same or different harvest lots or process lots of marijuana concentrate or extract~~.~~; or

(c) any amount of marijuana pre-rolls constructed in the same 48-hour period, using the same equipment, standard operating procedure, ingredients, reagents, and test batches from the same or different harvest lots or process lots.

(37) and (38) remain the same, but are renumbered (47) and (48).

(49) "Quality Assurance Testing Requirements Appendix" means the State Laboratory's Quality Assurance Testing Requirements Appendix (Version 1.0), which sets forth testing requirements and action levels for marijuana and marijuana products. The state laboratory adopts and incorporates by reference the Appendix. A copy of the Appendix is available electronically at https://dphhs.mt.gov/assets/dnd/StateLaboratoryQualityAssuranceTestingRequirementsAppendix.pdf and may also be obtained from the Department of Public Health and Human Services, Laboratory Services Bureau, 1400 E. Broadway, Helena MT, 59620.

~~(39)~~(50) "Quality control sample" means a sample that is produced and used by a testing laboratory for the purpose of ensuring the quality of the data and results. Quality control samples include initial calibration verifications, continuing calibration verifications, laboratory control samples, method blanks, replicates, and matrix spikes. When quality control samples fail, it is assumed the preparatory/extraction process, instrumentation, procedures, equipment, etc., are out of statistical control.

(40) remains the same, but is renumbered (51).

(52) "Reagent" means a compound, mixture, substance, or chemical ingredient added to a system to cause a chemical reaction or test if a reaction occurs. A reagent may be used to tell whether a specific chemical substance is present by causing a reaction to occur with a chemical substance.

(53) "Remediation" means the process or technique applied to marijuana items to remove contaminants from such marijuana items that have failed the required quality assurance compliance testing. Dilution is not a permissible form of remediation.

(41) through (45) remain the same, but are renumbered (54) through (58).

(59) "Solvent" means a class of chemical compounds described by their function in chemistry to dissolve, suspend, or extract analytes of interest from materials. Solvents are divided into the following classes:

(a) Hydrocarbon solvents including aliphatic, aromatic, and paraffinic solvents;

(b) Oxygenated solvents including alcohols, ketones, esters, ethers, glycol ethers, and glycol ether esters; and

(c) Halogenated solvents that include halogens such as chlorine, bromine, or iodine.

(60) "Solvent based marijuana concentrate and extract" means a marijuana concentrate and extract manufactured from only tested and compliant usable marijuana using solvents, or subcritical or supercritical CO2 and that does not use water in any state phase. The term includes tinctures, shatter, budder, wax, resin, and hash oils.

(46) through (51) remain the same, but are renumbered (61) through (66).

(67) "Traceability" means the principle of maintaining an unbroken chain of documentation tracking all laboratory samples, standards, reagents, and equipment utilized at every step of the laboratory process. This includes sample collection, preparation, analysis, data acquisition, and reporting.

(52) remains the same, but is renumbered (68).

AUTH: 16-12-202, 16-12-209, MCA
IMP: 16-12-202, 16-12-209, MCA

37.107.310 QUALITY ASSURANCE SAMPLING PROTOCOL (1) through (5) remain the same.

(6) The testing laboratory sampler shall collect a laboratory test sample that is random and representative of the test batch, meets the standards of the state laboratory's "Quality Assurance Sampling Protocol for Usable Marijuana, Marijuana Concentrates and Extracts, ~~and~~ Marijuana Infused Products, and Marijuana Pre-Rolls" SOP-001, and is sufficient to complete all required quality assurance testing including quality control samples and re-runs.

(7) through (13) remain the same.

(14) The state laboratory adopts and incorporates by reference the "Quality Assurance Sampling Protocol for Usable Marijuana, Marijuana Concentrates and Extracts, ~~and~~ Marijuana Infused Products, and Marijuana Pre-Rolls" SOP-001 (Version ~~1~~ 2.0), which describes the sampling protocol for marijuana, marijuana concentrates and extracts, and marijuana infused products. A copy of this publication is available electronically at https://dphhs.mt.gov/assets/MarijuanaLab/MarijuanaSamplingProtocolSOP.pdf and may also be obtained from the Department of Public Health and Human Services, Laboratory Services Bureau, 1400 E. Broadway, Helena MT, 59620.

AUTH: 16-12-202, 16-12-209, MCA
IMP: 16-12-202, 16-12-209, MCA

37.107.316 ~~TESTING LABORATORY~~ QUALITY ASSURANCE TESTING REQUIREMENTS (1) ~~Except as provided in (10), a licensee must submit for testing a sample of every test batch from a harvest lot of marijuana and process lots of marijuana-infused products, extracts, and concentrates intended for use by a~~

~~customer prior to selling or transferring the marijuana item to a customer~~ Every harvest lot, process lot, and test batch thereof must be submitted for testing by the licensee and pass the testing requirements set forth under the Quality Assurance Testing Requirements Appendix and this subchapter prior to final sale to a customer and prior to use in the production of marijuana concentrates and extracts, marijuana infused products, marijuana pre-rolls, or other marijuana items therein.

(2) All marijuana items intended for ~~direct~~ final sale or transfer to customers shall be tested in its final form. The addition of any ingredient or reagent after final quality assurance compliance testing will require retesting with respect to the mandatory quality assurance testing requirements set forth in the Quality Assurance Testing Requirements Appendix and this subchapter.

(3) Prior to sale or transfer to another licensee, all marijuana items shall be submitted for testing by the licensee who cultivated or manufactured the product for the quality assurance testing requirements set forth in the Quality Assurance Testing Requirements Appendix and this subchapter. The test results shall be disclosed to the purchasing licensee.

(4) All laboratory test sample results shall be reported into the seed-to-sale tracking system on an as received basis. Dry weight reporting or corrections are not permitted.

(5) Except as provided for under (6):

(a) composite laboratory test samples from the same or different process lots and test batches therein are prohibited; and

(b) composite laboratory test samples from the same or different harvest lots and test batches therein are strictly prohibited. Effective September 1, 2023, multi-strain harvest lots and, by extension, multi-strain composite laboratory samples are prohibited.

(6) Any request from a licensee to a testing laboratory to composite marijuana items from different harvest lots, process lots, or test batches thereof for quality assurance compliance testing in any fashion, combination, ratio, or configuration is prohibited unless written permission has been granted by the state laboratory.

(7) Useable marijuana: A licensee shall submit for testing all harvest lots and test batches therein of usable marijuana for the analyses set forth under Table 1.0 of the Quality Assurance Testing Requirements Appendix prior to final sale to customers and/or prior to use in the production of marijuana concentrates and extracts, marijuana infused products, or marijuana pre-rolls.

(8) Non-solvent based marijuana concentrate and extract: A licensee shall submit for testing all process lots and test batches therein of non-solvent based marijuana concentrate and extract for the analyses set forth under Table 1.0 of the Quality Assurance Testing Requirements Appendix prior to final sale to customers and prior to use in the production of marijuana infused products or marijuana pre-rolls.

(9) Solvent based marijuana concentrate and extract: A licensee shall submit for testing all process lots and test batches therein of solvent based marijuana concentrate and extract for the analyses set forth under Table 1.0 of the Quality Assurance Testing Requirements Appendix prior to final sale to customers

and/or prior to use in the production of marijuana infused products or marijuana pre-rolls.

(10) Marijuana infused products: A licensee shall submit for testing all process lots and test batches therein of marijuana infused products for the analyses set forth under Table 1.0 of the Quality Assurance Testing Requirements Appendix prior to final sale to customers.

(11) Marijuana pre-rolls: A licensee shall submit for testing all process lots and test batches therein of marijuana pre-rolls for the analyses set forth under Table 1.0 of the Quality Assurance Testing Requirements Appendix prior to final sale to customers.

(12) A licensee shall submit for testing all process lots and test batches therein of marijuana items that consist of two or more previously tested and compliant marijuana items into a final form marijuana item (such as moon rocks or canna-cigars) for the following analyses prior to final sale to customers:

(a) potency; and

(b) microbiologicals.

(13) Use of any untested marijuana item as an ingredient in marijuana concentrates and extracts, marijuana infused products, marijuana pre-rolls, or any marijuana item therein is prohibited.

~~(3)~~(14) The ~~cannabinoid profile/~~potency test for each sample must include:

(a) through (e) remain the same.

~~(4)~~(15) The laboratory test sample and related lot or test batch fail quality assurance testing for moisture analysis if the results are greater than ~~12.0~~ 15.0%.

(5) through (8) remain the same, but are renumbered (16) through (19).

~~(9)~~(20) A laboratory test sample and related lot or test batch fail quality assurance testing for residual solvents if the results are greater than the action levels provided in ~~table 1.0~~ Table 2.0 of the Quality Assurance Testing Requirements Appendix.

~~Table 1.0~~

~~Residual Solvents~~	~~(CAS) Registry Number~~	~~Action Level ppm~~
~~Acetone~~	~~67-64-1~~	~~5,000~~
~~Benzene~~	~~71-43-2~~	~~2~~
~~Total Butanes~~	~~See[1]~~	~~5,000~~
~~* n-butane~~	~~106-97-8~~	
~~* iso-butane~~	~~75-28-5~~	
~~Chloroform~~	~~67-66-3~~	~~2~~
~~Cyclohexane~~	~~110-82-7~~	~~3,880~~
~~Dichloromethane~~	~~75-09-2~~	~~600~~
~~Ethyl acetate~~	~~141-78-6~~	~~5,000~~
~~Heptane~~	~~142-82-5~~	~~5,000~~
~~Total Hexanes~~	~~See[2]~~	~~290~~
~~* n-hexane~~	~~110-54-3~~	
~~* 2-methylpentane~~	~~107-83-5~~	
~~* 3-methylpentane~~	~~96-14-0~~	
~~* 2,2-dimethylbutane~~	~~75-83-2~~	

* 2,3-dimethylbutane	79-29-8	
Isopropanol (2-propanol)	67-63-0	5,000
Methanol	67-56-1	3,000
Total Pentanes	See[3]	5,000
* n-pentane	109-66-0	
* iso-pentane	78-78-4	
* neo-pentane	463-82-1	
Propane	74-98-6	5,000
Toluene	108-88-3	890
Total Xylenes	See[4]	2,170
* 1,2-dimethylbenzene	95-47-6	
* 1,3-dimethylbenzene	108-38-3	
* 1,4-dimethylbenzene	106-42-3	

1 Total butanes should be calculated as sum of n-butane and iso-butane.
2 Total hexanes should be calculated as sum of n-hexane, 2-methylpentane, 3-methylpentane, 2,2-dimethylbutane and 2,3-dimethylbutane.
3 Total pentanes should be calculated as sum of n-pentane, iso-pentane, and neo-pentane.
4 Total xylenes should be calculated as sum of 1,2-dimethylbenzene, 1,3-dimethylbenzene, and 1,4-dimethylbenzene.

(10)(21) Heavy metals will shall be tested at random until December 31, 2023. Effective January 1, 2024, heavy metals testing is mandatory. A laboratory test sample and related lot or test batch fail quality assurance testing for heavy metals if the results are greater than the action levels provided in table 2.0 Table 3.0 of the Quality Assurance Testing Requirements Appendix.

Table 2.0

Heavy Metals	Action Level ppm; Inhalable Marijuana Items	Action Level ppm; Other Marijuana Items
Inorganic Arsenic	0.2	1.5
Cadmium	0.2	0.5
Lead	0.5	0.5
Mercury	0.1	3.0

(11)(22) A laboratory test sample and related lot or test batch fail quality assurance testing for pesticides if the results are greater than the action levels provided in table 3.0 Tables 4.0a and 4.0b of the Quality Assurance Testing Requirements Appendix.

Table 3.0

Pesticides	(CAS) Registry Number	Action Level ppm; Dry Flower	Action Level ppm; Concentrates and Extracts
Abamectin	71751-41-2	0.5	2.5

Acequinocyl	57960-19-7	2	10
Bifenazate	149877-41-8	0.2	1
Bifenthrin	82657-04-3	0.2	1
Chlormequat Chloride	999-81-5	1	5
Cyfluthrin	68359-37-5	1	5
Daminozide	1596-84-5	1	5
Etoxazole	153233-91-1	0.2	1
Fenoxycarb	72490-01-8	0.2	1
Imazalil	35554-44-0	0.2	1
Imidacloprid	138261-41-3	0.4	2
Myclobutanil	88671-89-0	0.2	0.6
Paclobutrazol	76738-62-0	0.4	2
Pyrethrins†	8003-34-7	1	5
Spinosad	168316-95-8	0.2	1
Spirotetramat	203313-25-1	0.2	1
Trifloxystrobin	141517-21-7	0.2	1

† Pyrethrins should be measured as the cumulative residues of pyrethrin 1, cinerin 1, and jasmolin 1 (CAS numbers 121-21-1, 25402-06-6, and 4466-14-2 respectively).

(12) Licensees must adhere to testing requirements for all marijuana and marijuana products intended for sale or transfer to customers.

(a) Usable marijuana, including trim and manicure must be tested for:

(i) pesticides;

(ii) moisture content;

(iii) cannabinoid profile/potency;

(iv) microbiological;

(v) mycotoxin;

(vi) filth and foreign matter; and

(vii) heavy metals (random testing).

(b) A licensee has the option to forgo testing of usable marijuana, including trim and manicure, if that usable marijuana is subject to further processing before sale or transfer to customers.

(c) Marijuana extract and concentrate that is intended for direct sale or transfer to customers must be tested for:

(i) pesticides;

(ii) cannabinoid profile/potency;

(iii) microbiological;

(iv) mycotoxin;

(v) heavy metals (random testing); and

(vi) residual solvents.

(d) Marijuana extract and concentrate that is intended for further processing before direct sale or transfer to customers must be tested for:

(i) pesticides;

~~(ii) residual solvents;~~
~~(iii) mycotoxin; and~~
~~(iv) heavy metals (random testing).~~
~~(e) Marijuana infused products intended for human consumption, ingestion, or used as suppositories, topicals, and transdermal patches must be tested for:~~
~~(i) cannabinoid profile/potency; and~~
~~(ii) microbiological.~~
~~(f) All marijuana products listed in (e) must use marijuana extract and concentrate that has passed quality assurance testing requirements as set forth in (d).~~

AUTH: 16-12-202, 16-12-209, MCA
IMP: 16-12-202, 16-12-209, MCA

4. STATEMENT OF REASONABLE NECESSITY

The department proposes to amend ARM 37.107.303, 37.107.310, and 37.107.316 to improve and clarify laboratory testing rules for the analysis of marijuana products. These proposed rules are intended to clarify what contaminate testing is necessary for the wide array of currently available marijuana products and to account for new types of products continuously being introduced as the industry expands within Montana. The proposed rules include additions to terminology, updates to the Quality Assurance Sampling Protocol for Usable Marijuana, Marijuana Concentrates and Extracts, Marijuana Infused Products, and Marijuana Pre-Rolls (SOP-001), and provide more encompassing and comprehensive language on the required quality assurance testing. The department is also proposing creation of a Quality Assurance Testing Requirements Appendix to be adopted and incorporated by reference under these rules. The purpose of the appendix is to set forth testing requirements in a table format that is more clear, concise, and easier to read as compared to the current rules. The proposed rules are necessary to stay up to date with regulating the continually changing array of available marijuana products. Additionally, the proposed amendments will eliminate confusion concerning how and when to test marijuana items that are not currently addressed adequately in rule. As the marijuana industry in Montana continues to evolve and mature, so must the rules and regulations concerning marijuana product safety testing to adequately ensure the health and wellbeing of the Montana consumer.

Copies of the proposed Quality Assurance Testing Requirements Appendix and SOP-001 are located at:

https://dphhs.mt.gov/assets/dnd/MarijuanaSamplingProtocolSOPVersion2.pdf

https://dphhs.mt.gov/assets/dnd/StateLaboratoryQualityAssuranceTestingRequirementsAppendix.pdf

ARM 37.107.303

The department proposes to amend ARM 37.107.303 by adopting new terms and definitions along with amending existing definitions. The proposed revisions are necessary to further improve clarity of the testing requirements applicable to marijuana products. The most notable proposed definitions include subcategorizing marijuana infused products into "direct marijuana infused products" and "indirect marijuana infused products." Additionally, marijuana concentrates and extracts are subcategorized into "solvent based marijuana concentrates and extracts" and "non-solvent base marijuana concentrates and extracts." Including definitions for these product types provides much needed clarity in the rules to ensure these products are adequately tested prior to sale. Additionally, harvest lot and process lot definitions have been amended to clarify what a laboratory test sample from these lots must consist of and how it shall be analyzed at the testing laboratory. The proposed amendments are necessary to clarify the terms used throughout the rules and to provide for a better understanding of the quality assurance testing regulations to ensure marijuana items are properly screened.

ARM 37.107.310

The department is proposing to amend SOP-001, adopted by reference in ARM 37.107.310(14). The proposed rule change is necessary to align with proposed amendments to ARM 37.107.303 and 37.107.316. The proposed rule change also addresses stakeholder feedback received as part of public comment during a prior rulemaking under MAR Notice No. 37-967 that were deemed outside the scope of the rulemaking at the time. Sampling information for the proposed term "marijuana pre-roll" was added to SOP-001 to ensure consistency across all testing rules. Language addressing potential liability concerns by laboratory samplers resulting from accidental damage of product was included to allow for the licensee to physically weigh the product so long as it is under the observation of the testing laboratory sampler. Language requiring licensees to submit to the laboratory the mass of each harvest lot test batch was included to ensure compliant sampling occurs in the field and to monitor lot weight discrepancies. Video surveillance language was added to ensure laboratory samplers conduct rule compliant sampling methodology. The department is also proposing to increase the harvest lot test batch size from 5.0 pounds to 10.0 pounds to accommodate growth of the industry within Montana. These proposed amendments to SOP-001 are necessary to ensure a random and representative laboratory test sample is collected correctly as well as ensuring the sample results produced by the testing laboratory are representative of the marijuana product ultimately sold to the consumer.

ARM 37.107.316

The department is proposing to amend ARM 37.107.316 to clarify and update the quality assurance testing language. The proposed amendments address new marijuana item classifications and subcategories and detail specific contaminant testing requirements for these items. These amendments also address stakeholder feedback received as part of public comment during a prior rulemaking under MAR Notice No. 37-967 that were deemed outside the scope of the rulemaking at the

time. Additionally, language has been added to avoid scenarios under which certain marijuana products were technically not required to undergo quality assurance testing under the rule. Clarity is provided on how to test marijuana items which previously were not adequately addressed in rule. The department is also proposing to expand and move testing requirements stated in the rule to a newly created "Quality Assurance Testing Requirements Appendix." The proposed expanded pesticide list provides a much more comprehensive screen for harmful chemicals, which could be applied on marijuana flower and later consumed. The percent moisture action level has been increased in response to stakeholder feedback received as part of public comment during a prior rulemaking under MAR Notice No. 37-967 and has been set to follow nationally recognized American Herbal Pharmacopeia standards. Mandatory heavy metal quality assurance testing is proposed for usable marijuana and marijuana concentrates and extracts, and the authorization of random heavy metal testing is removed. Concise language regarding composite laboratory test samples is added to clearly state that this type of laboratory test sample is prohibited unless the state laboratory grants written approval. The proposed amendments ensure the quality of marijuana products in Montana and protect the health and wellbeing of the Montana consumer.

Fiscal Impact

The proposed rules are not anticipated to have a significant fiscal impact on the department.

5. SMALL BUSINESS IMPACT STATEMENT

Pursuant to 2-4-111, MCA, the department has analyzed whether the proposed rule amendments will significantly and directly impact small businesses. The department has concluded the rules will significantly and directly impact small businesses licensed as testing laboratories, cultivators, or manufacturers of marijuana. The department does not collect or have information to enable it to determine the number of licensees that meet the definition of a small business under 2-4-102(13), MCA. For the purpose of this analysis, the department presumes a significant portion of the licensed entities meet the definition of a small business.

Currently, there are 278 cultivator, 175 manufacturer, and four testing laboratory licensees active within Montana. The following rule amendments are anticipated to have a significant and direct impact on these licensees: (A) requiring heavy metals testing for marijuana flower and marijuana concentrates and extracts; (B) requiring harvest lots to be identical in strain; and (C) increasing harvest lot test batch sizes from 5.0 pounds to 10.0 pounds.

A. *Heavy Metals Testing*

The department is proposing to make testing for heavy metals mandatory for marijuana flower and marijuana concentrates and extracts. Under current rule, heavy metals testing for these products must only be conducted at random. Shifting

from random testing to mandatory testing will require some testing laboratories to purchase additional instrumentation. Based on consultations with an instrumentation manufacturer, the department estimates the price of purchasing appropriate instrumentation will range from approximately $150,000 to $300,000. These equipment costs are anticipated to be at least partially offset by additional revenue generated by testing laboratories from conducting heavy metals testing. The return on investment in the equipment depends heavily on the sample volume of the particular testing laboratory. As such, the department is unable to quantify how much of the initial testing equipment cost will be offset by additional revenue from testing. The testing requirement will also increase testing costs for licensees who grow marijuana flower or manufacture marijuana concentrates and extracts. The extra cost per sample cannot be quantified by the department because each testing laboratory is anticipated to charge differently for testing depending on their business model and return on investment.

In order to ease the transition for licensees to mandatory testing of heavy metals, the department is proposing to delay implementation of the requirement until January 1, 2024. The department believes this time period of approximately one year from the date of publication of this rulemaking notice will ensure a smooth transition to the new testing requirement by allowing testing laboratories time to purchase necessary instrumentation, validate methodology, and assess testing costs. In addition to the delayed implementation date, the department has previously made known its intent to propose implementation of mandatory heavy metals testing through communications with stakeholders and as part of a prior rulemaking under MAR Notice No. 37-967.

B. *Identical Strain Harvest Lots*

The department is proposing to amend the definition of harvest lot to require lots to be composed of a single strain. Under current rule, harvest lots are permitted to consist of multiple strains. The requirement for harvest lots to be composed of a single strain will increase testing costs for some cultivators by disallowing compositing of multiple marijuana strains into one sample for quality assurance compliance testing. The department is unable to quantify the resulting amount of increase in costs because these costs are anticipated to vary significantly from licensee to licensee. Licensees that currently composite larger numbers of strains into a harvest lot will incur higher testing costs than those that currently composite fewer strains. These costs can be mitigated by licensees changing their business practices to grow fewer strains during a single harvest. The department is proposing delaying implementation of this requirement to September 1, 2023, to afford licensees ample time to transition to the new requirement.

C. *Increase of harvest lot test batch size from 5.0 pounds to 10.0 pounds*

The department is proposing to increase the harvest lot test batch size from 5.0 pounds to 10.0 pounds. This will decrease the amount of testing required for cultivators, which will reduce testing costs for these licensees. The department is

unable to quantify the resulting decrease in costs because testing costs are not static, and growing regimens are based upon continually evolving growing practices and production of different strains. The department is proposing delaying implementation of this requirement to September 1, 2023, to afford licensees ample time to transition to the new test batch size requirement.

6. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Kassie Thompson, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena, Montana, 59604-4210; fax (406) 444-9744; or e-mail hhsadminrules@mt.gov, and must be received no later than 5:00 p.m., January 6, 2023.

7. The Office of Legal Affairs, Department of Public Health and Human Services, has been designated to preside over and conduct this hearing.

8. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 6 above or may be made by completing a request form at any rules hearing held by the department.

9. An electronic copy of this notice is available on the department's web site at https://dphhs.mt.gov/LegalResources/administrativerules, or through the Secretary of State's web site at http://sosmt.gov/ARM/register.

10. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

/s/ ROBERT LISHMAN
Robert Lishman
Rule Reviewer

/s/ CHARLES T. BRERETON
Charles T. Brereton, Director
Department of Public Health and Human Services

Certified to the Secretary of State November 29, 2022.

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 37.12.201, 37.12.205, and 37.12.206 and the repeal of ARM 37.12.601, 37.12.603, and 37.12.608 pertaining to premarital blood testing	)))))	NOTICE OF PROPOSED AMENDMENT AND REPEAL NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. The Department of Public Health and Human Services proposes to amend and repeal the above-stated rules.

2. The Department of Public Health and Human Services will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Public Health and Human Services no later than 5:00 p.m. on December 15, 2022, to advise us of the nature of the accommodation that you need. Please contact Kassie Thompson, Department of Public Health and Human Services, Office of Legal Affairs, P.O. Box 4210, Helena MT 59604-4210; telephone (406) 444-4094; fax (406) 444-9744; or e-mail hhsadminrules@mt.gov.

3. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

37.12.201 REGISTRATION (1) remains the same.

(2) All laboratories doing public health work in the state of Montana shall register with the department. Such laboratories which meet the standards of the department shall ~~be listed as suitable for the tests required under Title 40, chapter 1, part 2, MCA, relating to marriage licenses, and shall~~ be designated as approved laboratories.

AUTH: ~~40-1-206,~~ 50-1-202, MCA
IMP: ~~40-1-206,~~ 50-1-202, MCA

37.12.205 APPROVAL (1) remains the same.

AUTH: ~~40-1-206,~~ 50-1-202, MCA
IMP: ~~40-1-206,~~ 50-1-202, MCA

37.12.206 INSPECTIONS (1) remains the same.

AUTH: ~~40-1-206,~~ 50-1-202, MCA
IMP: ~~40-1-206,~~ 50-1-202, MCA

4. The department proposes to repeal the following rules:

37.12.601 CERTIFICATE FORM

AUTH: 40-1-206, MCA
IMP: 40-1-203, 40-1-204, MCA

37.12.603 PROCEDURES

AUTH: 40-1-206, MCA
IMP: 40-1-203, 40-1-204, 40-1-206, MCA

37.12.608 EXEMPTIONS FROM REQUIREMENT FOR SEROLOGICAL TESTING

AUTH: 40-1-206, MCA
IMP: 40-1-206, MCA

5. STATEMENT OF REASONABLE NECESSITY

The department is proposing to revise its administrative rules relating to premarital blood testing for women to align with passage of House Bill (HB) 136 during Montana's 66th Legislative Session. HB 136 abolished the requirement for premarital blood testing and repealed the grant of rulemaking under 40-1-206, MCA, that served as the basis for the premarital blood testing rules.

The department is proposing to amend its rules to remove references to 40-1-206, MCA, to repeal the premarital blood testing rules, and to repeal references to premarital blood testing requirements in the department's regulations. These proposed rule changes are necessary to implement the requirements of HB 136 and to eliminate rules that are no longer supported under the law.

6. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Kassie Thompson, Office of Legal Affairs, Department of Public Health and Human Services, P.O. Box 4210, Helena MT 59604-4210, no later than 5:00 p.m. on January 6, 2023. Comments may also be faxed to (406) 444-9744 or e-mailed to hhsadminrules@mt.gov.

7. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Kassie Thompson at the above address no later than 5:00 p.m., January 6, 2023.

8. If the agency receives requests for a public hearing on the proposed action from either 10% or 25, whichever is less, of the persons directly affected by the

proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 928 persons based upon currently available department data showing an average of 9,283 marriages per year from 2018 to 2020.

9. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 6 above or may be made by completing a request form at any rules hearing held by the department.

10. An electronic copy of this notice is available on the department's web site at https://dphhs.mt.gov/LegalResources/administrativerules, or through the Secretary of State's web site at http://sosmt.gov/ARM/register.

11. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

12. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment and repeal of the above-referenced rules will not significantly and directly impact small businesses.

/s/ ROBERT LISHMAN
Robert Lishman
Rule Reviewer

/s/ CHARLES T. BRERETON
Charles T. Brereton, Director
Department of Public Health and Human Services

Certified to the Secretary of State November 29, 2022.

BEFORE THE DEPARTMENT OF PUBLIC SERVICE REGULATION
OF THE STATE OF MONTANA

In the matter of the adoption of NEW RULE I and the repeal of ARM 38.2.2401, 38.2.2403, 38.2.2404, 38.2.2405, and 38.2.2406 pertaining to interventions	)))))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION AND REPEAL

TO: All Concerned Persons

1. On January 10, 2023, at 1:00 p.m., the Department of Public Service Regulation will hold a public hearing in the Bollinger Room, 1701 Prospect Avenue, Helena, Montana, to consider the proposed adoption and repeal of the above-stated rules. The hearing will be livestreamed at https://psc.mt.gov/livestream. Parties seeking to participate in the hearing must contact the department at 1-800-646-6150, by 5:00 p.m., January 9, 2023, to receive the necessary call-in information for the hearing.

2. The Department of Public Service Regulation will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Department of Public Service Regulation no later than 5:00 p.m. on January 9, 2023, to advise us of the nature of the accommodation that you need. Please contact the Department of Public Service Regulation, 1701 Prospect Avenue, P. O. Box 202601, Helena, Montana, 59620-2601; telephone (406) 444-6199; fax (406) 444-7618; or e-mail pschelp@mt.gov.

3. The rule as proposed to be adopted provides as follows:

NEW RULE I INTERVENTION (1) The Commission may establish a deadline for intervention in commission proceedings.

(2) The Montana Consumer Counsel (MCC) is a party to any proceeding upon filing a notice of intervention before the intervention deadline. After the deadline for intervention, the MCC may intervene by filing a late motion as described in (6).

(3) Except as provided in (2), any person seeking to intervene in a commission proceeding must file a motion to intervene. Motions must state:

(a) the movant's name and contact information, including telephone number, physical address, and electronic mail address;

(b) the name and contact information of the movant's attorney or authorized representative, including telephone number, physical address, and electronic mail address;

(c) if the movant is an organization, the approximate number of members in and the purpose of the organization;

(d) the nature and extent of the movant's interest in the proceedings;

(e) to the extent known, the position taken by the movant and any issues the movant intends to raise in the proceedings; and

(f) any special knowledge or expertise of the movant that would assist the Commission in resolving the issues in the proceedings.

(4) Objections to any intervention must be filed within seven days of a motion for intervention. Objections must be in the form of a brief and contain a short and plain statement of the reasons why intervention should be denied or conditioned. Movants may file a response brief to an objection within seven days of the filing of an objection. No additional briefing is permitted without prior Commission approval. The Commission will render a decision on the motion and briefing.

(5) Timely motions for intervention will be deemed granted if no timely objection is filed and the Commission does not otherwise act on a motion within seven days of its filing.

(6) If a motion is filed after the deadline for intervention, any person seeking intervention must demonstrate why late intervention should be granted. When ruling on a motion for late intervention, the Commission or hearing examiner may consider whether:

(a) the movant had good cause for the failure to file a timely motion;

(b) any delay might result from granting intervention;

(c) the movant's interest is not adequately expressed by other parties in the proceeding;

(d) granting intervention might result in prejudice to or undue burden upon existing parties; and

(e) the motion conforms to the requirements of (3).

(7) If it appears, after consideration, that a motion to intervene discloses a substantial interest in the subject matter of the proceeding, that participation of the movant will be in the public interest, or that the granting of the motion would not unduly broaden the issues in the proceeding, the Commission may grant the motion. Except in extraordinary circumstances, an untimely intervention will not be permitted to delay or defer any procedural schedule established before a party's late intervention.

(8) Any movant granted intervention under these rules shall be known as an "intervenor" and have the same rights and responsibilities as other parties to the proceeding.

(9) When necessary to avoid delay, unreasonable duplication of positions, prejudice to other parties, or upon a finding of good cause, the Commission or hearing examiner may impose appropriate conditions upon any intervenor's participation in the proceedings. The Commission or hearing examiner must provide notice and a reasonable opportunity to be heard.

AUTH: 69-1-110, 69-2-101, 69-3-103, 69-12-201, MCA
IMP: 69-2-101, MCA

REASON: The Commission's rules regarding intervention have not been revised since 1977. Consistent with its obligations under 2-4-314, MCA, the Commission has determined that its existing intervention rules can be modernized and simplified into a single rule.

Section (1) of the proposed new rule reflects current Commission practice, where intervention deadlines are set in an initial notice, where appropriate.

Section (2) of the proposed new rule recognizes that the MCC has a statutory right to participate in Commission proceedings, and no formal action granting a timely request for intervention should be required. All other interested parties will be required to file a motion for intervention that satisfies the requirements of (3).

Section (3) establishes the minimum information that must be in a motion for intervention filed by any person except the MCC. These criteria are modeled after the Oregon Public Utility Commission's rule on intervention and are designed to assist the Commission in determining whether granting intervention is appropriate.

Because Commission proceedings operate on short statutory deadlines, (4) creates a standard schedule for briefing motions for intervention.

Section (5) of the proposed new rule is designed to enhance administrative efficiency, automatically granting a timely motion if no objections to it are timely filed and the Commission has not acted on the motion within seven days of its filing.

Section (6) provides clear standards for evaluating late motions for intervention.

Section (7) carries forward the standards currently found in ARM 38.2.2405 for granting intervention. It also describes the circumstances under which a late motion may delay the normal course of a proceeding.

Section (8) carries forward language currently found in ARM 38.2.2405 that describes the rights and responsibilities of persons granted intervention.

Section (9) carries forward from existing Commission rules the Commission's authority to efficiently manage its proceedings. The proposed rule allows the Commission or hearing examiner to impose appropriate conditions upon an intervenor's participation in the proceedings when (1) necessary to avoid delay, unreasonable duplication of positions, or prejudice to other parties; or (2) a finding of good cause exists to impose appropriate conditions. Under the proposed new rule, the imposition of appropriate conditions upon an intervenor's participation in the proceedings may only occur after (1) the intervenor has been informed of the contemplated conditions; and (2) the intervenor has been given the opportunity to explain why the contemplated conditions should not be imposed.

4. The department proposes to repeal the following rules:

<u>38.2.2401 CONTENTS OF PETITION</u>

AUTH: 69-1-110(3), 69-2-101, 69-3-103, 69-12-201(2), MCA
IMP: 69-2-101, MCA

38.2.2403 GENERAL INTERVENTION

AUTH: 69-1-110(3), 69-2-101, 69-3-103, 69-12-201(2), MCA
IMP: 69-2-101, MCA

38.2.2404 SPECIAL INTERVENTION

AUTH: 69-1-110(3), 69-2-101, 69-3-103, 69-12-201(2), MCA
IMP: 69-2-101, MCA

38.2.2405 DISPOSITION OF PETITIONS AND MOTIONS TO INTERVENE

AUTH: 69-1-110(3), 69-2-101, 69-3-103, 69-12-201(2), MCA
IMP: 69-2-101, MCA

38.2.2406 LIMITATION ON INTERVENTION

AUTH: 69-1-110(3), 69-2-101, 69-3-103, 69-12-201(2), MCA
IMP: 69-2-101, MCA

REASON: The Commission's proposed intervention rule will replace all currently effective intervention rules.

5. Interested persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Department of Public Service Regulation, 1701 Prospect Avenue, P.O. Box 202601, Helena, MT, 59620-2601; telephone (406) 444-6199; fax (406) 444-7618; or e-mail pschelp@mt.gov, and must be received no later than 5:00 p.m. on January 13, 2023.

6. The Montana Consumer Counsel, 111 North Last Chance Gulch, Suite 1B, Helena, MT 59620-1703, telephone (406) 444-2771, is available and may be contacted to represent consumer interests in this matter.

7. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list may do so by submitting a written request to the department. The request must include the name, e-mail address, and mailing address of the person to receive notices. The request must specify which of the following matters the person wishes to receive notices regarding: electric utilities, providers, and suppliers; natural gas utilities, providers, and suppliers; telecommunications utilities and carriers; water and sewer utilities; common carrier pipelines; motor carriers, rail carriers; and/or administrative procedures. The written request may be mailed or delivered to the Department of Public Service Regulation, Legal Division, 1701 Prospect Avenue, P. O. Box 202601, Helena, MT 59620-2601 or emailed to pschelp@mt.gov. Persons may also have their name added to the list

of interested persons by completing a request form at any rules hearing held by the department.

8. With regard to the requirements of 2-4-111, MCA, the department has determined that the adoption and repeal of the above-referenced rules will not significantly and directly impact small businesses.

9. An electronic copy of this proposal notice is available through the Secretary of State's web site at http://sosmt.gov/ARM/Register.

10. The bill sponsor contact requirements of 2-4-302, MCA do not apply.

11. A commissioner or a duly appointed presiding officer shall preside over and conduct the hearing.

/s/ LUCAS HAMILTON
Lucas Hamilton
Rule Reviewer

/s/ JAMES BROWN
James Brown
President
Montana Public Service Commission
Department of Public Service Regulation

Certified to the Secretary of State November 29, 2022.

BEFORE THE COMMISSIONER OF POLITICAL PRACTICES
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 44.12.204 pertaining to the payment threshold--inflation adjustment for lobbyists	)))))	NOTICE OF PROPOSED AMENDMENT NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On January 11, 2023, the Commissioner of Political Practices proposes to amend the above-stated rule.

2. The Commissioner of Political Practices will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Commissioner of Political Practices no later than 5:00 p.m. on January 3, 2023, to advise us of the nature of the accommodation that you need. Please contact Scott Cook, Commissioner of Political Practices, P.O. Box 202401, 1209 Eighth Avenue, Helena, Montana, 59620-2401; telephone (406) 444-2942; fax (406) 444-1643; or e-mail scook3@mt.gov.

3. The rule as proposed to be amended provides as follows, stricken matter interlined, new matter underlined:

44.12.204 PAYMENT THRESHOLD--INFLATION ADJUSTMENT

(1) Pursuant to the operation specified in 5-7-112, MCA, the adjusted payment threshold for calendar years ~~2021 and 2022 is $2,650~~ 2023 and 2024 is $2,900.

AUTH: 5-7-111, MCA
IMP: 5-7-112, MCA

Reasonable Necessity: Section 5-7-112, MCA, requires the Commissioner of Political Practices, following the general election, to adjust the payment threshold amount for reporting of lobbying-related expenses based on application of an inflation factor specified in that statute. There is reasonable necessity for the amendment of the rule because 5-7-112, MCA, requires the Commissioner of Political Practices to publish the revised threshold as a rule.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to Scott Cook, Commissioner of Political Practices, P.O. Box 202401, 1209 Eighth Avenue, Helena, Montana, 59620-2401; telephone (406) 444-2942; fax (406) 444-1643; or e-mail scook3@mt.gov, and must be received no later than 5:00 p.m., January 9, 2023.

5. If persons who are directly affected by the proposed action wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Scott Cook at the above address no later than 5:00 p.m., January 9, 2023.

6. If the agency receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 34 persons based on the 342 lobbyists who registered to lobby in 2021-2022.

7. The commissioner maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 4 above or may be made by completing a request form at any rules hearing held by the department.

8. An electronic copy of this proposal notice is available on the Commissioner of Political Practice's website at politicalpractices.mt.gov or through the Secretary of State's website at http://sosmt.gov/ARM/Register.

9. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

10. With regard to the requirements of 2-4-111, MCA, the commissioner has determined that the amendment of the above-referenced rule will not significantly and directly impact small businesses.

/s/ Jaime MacNaughton
Jaime MacNaughton
Rule Reviewer

/s/ Jeffrey Mangan
Jeffrey Mangan
Commissioner

Certified to the Secretary of State November 29, 2022.

BEFORE THE DEPARTMENT OF PUBLIC SERVICE REGULATION
OF THE STATE OF MONTANA

In the matter of the adoption of NEW RULE I and the repeal of ARM 38.2.2401, 38.2.2403, 38.2.2404, 38.2.2405, and 38.2.2406 pertaining to interventions	)))))	NOTICE OF DECISION ON PROPOSED ADOPTION AND REPEAL

TO: All Concerned Persons

1. On July 8, 2022, the Department of Public Service Regulation published MAR Notice No. 38-2-255 pertaining to the public hearing on the proposed adoption and repeal of the above-stated rules at page 1185 of the 2022 Montana Administrative Register, Issue Number 13.

2. A public hearing on the notice of proposed adoption and repeal of the above-stated rules was held on August 2, 2022.

3. The Commission received substantial feedback concerning the proposed new rule. Many commenters expressed concern that the rule as drafted would inappropriately curtail public participation in Commission proceedings. Although the Commission does not agree that the rule as proposed would impair the public's right to participate in Commission proceedings, the Commission has decided to revise its proposed rule and begin a new rulemaking process. To avoid confusion about the content of and reasons for the proposed rule, the Commission has decided not to adopt and repeal the rules as noticed in MAR Notice No. 38-2-255.

/s/ LUCAS HAMILTON
Lucas Hamilton
Rule Reviewer

/s/ JAMES BROWN
James Brown
President
Montana Public Service Commission
Department of Public Service Regulation

Certified to the Secretary of State November 29, 2022.

NOTICE OF FUNCTION OF ADMINISTRATIVE RULE REVIEW COMMITTEES

Interim Committees and the Environmental Quality Council

Administrative rule review is a function of interim committees and the Environmental Quality Council (EQC). These interim committees and the EQC have administrative rule review, program evaluation, and monitoring functions for the following executive branch agencies and the entities attached to agencies for administrative purposes.

Economic Affairs Interim Committee

- Department of Agriculture
- Department of Commerce
- Department of Labor and Industry
- Department of Livestock
- Office of the State Auditor (Commissioner of Securities and Insurance)
- Office of Economic Development
- Division of Banking and Financial Institutions
- Alcoholic Beverage Control Division
- Cannabis Control Division

Education Interim Committee

- State Board of Education
- Board of Public Education
- Board of Regents of Higher Education
- Office of Public Instruction
- Montana Historical Society
- Montana State Library

Children, Families, Health, and Human Services Interim Committee

- Department of Public Health and Human Services

Law and Justice Interim Committee

- Department of Corrections
- Department of Justice

Energy and Telecommunications Interim Committee

- Department of Public Service Regulation.

Revenue Interim Committee

- Department of Revenue
- Montana Tax Appeal Board

State Administration and Veterans' Affairs Interim Committee

- Department of Administration
- Montana Public Employee Retirement Administration
- Board of Investments
- Department of Military Affairs
- Office of the Secretary of State
- Office of the Commissioner of Political Practices

Transportation Interim Committee

- Department of Transportation
- Motor Vehicle Division (Department of Justice)

Environmental Quality Council

- Department of Environmental Quality
- Department of Fish, Wildlife and Parks
- Department of Natural Resources and Conservation

Water Policy Interim Committee (where the primary concern is the quality or quantity of water)

- Department of Environmental Quality
- Department of Fish, Wildlife and Parks
- Department of Natural Resources and Conservation

These interim committees and the EQC have the authority to make recommendations to an agency regarding the adoption, amendment, or repeal of a rule or to request that the agency prepare a statement of the estimated economic impact of a proposal. They also may poll the members of the Legislature to determine if a proposed rule is consistent with the intent of the Legislature or, during a legislative session, introduce a bill repealing a rule, or directing an agency to adopt or amend a rule, or a Joint Resolution recommending that an agency adopt, amend, or repeal a rule.

The interim committees and the EQC welcome comments and invite members of the public to appear before them or to send written statements in order to bring to their attention any difficulties with the existing or proposed rules. The mailing address is P.O. Box 201706, Helena, MT 59620-1706.

HOW TO USE THE ADMINISTRATIVE RULES OF MONTANA AND THE MONTANA ADMINISTRATIVE REGISTER

Definitions:

Administrative Rules of Montana (ARM) is a looseleaf compilation by department of all rules of state departments and attached boards presently in effect, except rules adopted up to three months previously.

Montana Administrative Register (MAR or Register) is an online publication, issued twice-monthly, containing notices of rules proposed by agencies, notices of rules adopted by agencies, and interpretations of statutes and rules by the Attorney General (Attorney General's Opinions) and agencies (Declaratory Rulings) issued since publication of the preceding Register.

Use of the Administrative Rules of Montana (ARM):

Known Subject

1. Consult ARM Topical Index.
   Update the rule by checking recent rulemaking and the table of contents in the last Montana Administrative Register issued.

Statute

2. Go to cross reference table at end of each number and title which lists MCA section numbers and department corresponding ARM rule numbers.

RECENT RULEMAKING BY AGENCY

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through June 30, 2022. This table includes notices in which those rules adopted during the period June 10, 2022, through November 18, 2022, occurred and any proposed rule action that was pending during the past 6-month period. (A notice of adoption must be published within six months of the published notice of the proposed rule.) This table does not include the contents of this issue of the Montana Administrative Register (MAR or Register).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through June 30, 2022, this table, and the table of contents of this issue of the Register.

This table indicates the department name, title number, notice numbers in ascending order, the subject matter of the notice, and the page number(s) at which the notice is published in the 2022 Montana Administrative Register.

To aid the user, this table includes rulemaking actions of such entities as boards and commissions listed separately under their appropriate title number.

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